

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )	
Implementation of Section 621(a)(1) of )	
the Cable Communications Policy Act of 1984 )	MB Docket No. 05-
311	
as amended by the Cable Television Consumer )	
Protection and Competition Act of 1992 )	

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**COMMENTS OF KILLEEN, TEXAS**

These Comments are filed by the City of Killeen, Texas, in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Killeen believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

The City Killeen is a city with a population of 100,976. Our franchised cable provider is Time Warner. Our community has negotiated cable franchises since 1962.

**Our Current Franchise**

Our current franchise began on May 8, 1991, and expires on May 8, 2006. The franchise was originally granted to KBC Corporation (aka Cablevision) and was transferred to Time Warner on November 22, 1994. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. At this time we are not currently negotiating a franchise renewal with the incumbent provider because cable franchises are now governed by state law.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one (1) channel (or capacity) devoted to public access; one (1) channel (or capacity) devoted to educational access; and one (1) channel (or capacity) devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: monetary grants for each year that the city actively uses the government channel are paid by the cable operator as provided herein: \$100,000.00 within thirty (30) days of the effective date of the ordinance; \$30,000.00 during the third and fifth years of the franchise term; \$40,000.00 during the seventh and ninth years of the franchise term; and \$50,000.00 during the eleventh, thirteenth and fifteenth years of the franchise term.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. The cable operator is required to maintain an office and service center within the city, which must be open during all normal business hours. It must also have publicly-listed telephone lines where complaints and requests for repairs can be received twenty-four (24) hours a day, seven (7) days a week, and technicians must be on-call twenty-four (24) hours a day. The cable operator is required to respond to outages and severe reception problems during normal business hours within four (4) hours, or must contact the subscriber to explain why the problem cannot be corrected in that time. Response during non-business hours must be within twelve (12) hours. Scheduled service calls shall be in time frames of no more than four (4) hours. The cable operator is required to respond to each installation request within ten (10) days of receiving an order. Subscribers who experience outages in excess of twenty-four (24) hours shall be given a rebate in the form of a credit equal to one-half of that subscriber's monthly service bill, and outages in excess of forty-eight (48) hours shall receive a rebate equal to 100% of the monthly service bill. The cable operator is required to maintain records of complaints for three (3) years, and a summary of complaints is provided to the city upon request. If the city has doubts as to the reliability or quality of cable services, based on complaints or other evidence, the city manager can compel the cable operator to test, analyze and report on the performance no later than fourteen (14) days after a formal request. The cable operator is required to make parental controls available. All personnel, agents and representatives of the cable operator are required to wear photo-identification badges. A list of service offerings and prices is to be provided to subscribers

annually, and subscribers are to receive thirty (30) days notice of planned changes in programming or service. Telephone standards are in place, to include the following: 60% of calls must be answered within five (5) rings; 80% of all calls must be answered within seven (7) rings; 60% of all calls shall not be on hold longer than two (2) minutes; 90% of all calls shall not be on hold longer than three (3) minutes.

Our franchise requires that the cable operator currently provide service to the following areas of our community: all territorial limits of the city, and any areas added during the term of the franchise.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: after a public hearing, if the city determines that there exists a reasonable need for additional channel capacity and/or “state of the art” technology or upgraded facilities, and that the cable operator will receive a fair rate of return on its total investment, the city may order the cable operator to provide a specified number of channels and/or specified “state of the art” technology or upgraded facilities.

Our franchise contains the following insurance and bonding requirements: The cable operator is required to indemnify, defend and save harmless the city, its officers, agents and employees, against and from any and all claims by or on behalf of any person, firm or corporation or on account of any suit, judgment, execution, claim or demand whatsoever against the city resulting from the act of the cable operator, the conduct or management of the franchise or from any negligence arising from any occurrence in connection with same on the part of the cable operator, its servants, agents, licensees, officers or employees. The cable operator is required to carry property damage and general liability insurance with a company authorized to do business in Texas. The policy is required to provide \$1,000,000.00 for property damage to any one person or growing out of any one occurrence; \$1,500,000.00 for personal injury to any one person; and \$3,000,000.00 for personal injury to two (2) or more persons. The city is to be named as an insured, and each policy must contain a provision that the city will received thirty (30) days notice before any cancellation or material change.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. Prior to the utilization of any street, easement, or right-of-way or the placement of any tower, antenna, pole, underground plant or major distribution plant extensions, the cable operator is required to file with the city engineer, plans, diagrams and specifications showing the exact placement and use of the facilities

and showing their relationship with other utility lines, easements and other facilities, conduits and structures which are already in place.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The city may hold public hearings or conduct investigations through its city manager to review performance. The franchise also provides for liquidated damages for failure to comply with any time and performance requirements. Specific liquidated damages are as follows: \$500.00 per day for failure to complete system expansion, construction or reconstruction; \$50.00 per day for failure to provide upon written request, data, documents, reports, information or to cooperate with the city during an application process or system review; \$200.00 per day for failure to test, analyze and report on system performance after a written request from the city; \$500.00 per day for failure to provide in a continuing manner the types of services proposed in the cable operator's application; \$500.00 for failure to comply with operation, maintenance and technical standards; \$50.00 per day for failure to provide a cable connection within ten (10) days; \$100.00 per day for failure to restore the public right-of-way or to correct related violations of specifications, code, ordinance or other standards within seven (7) working days of notification; \$200.00 for failure to comply with customer service standards.

## **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: the cable operator is required to comply with all applicable state, federal and local laws in affect at the time of the franchise and as amended.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: The city's charter provides that the city can grant a franchise by ordinance after having been read at three (3) separate regular meetings of the city council, the last of which must be not less than thirty (30) days from the first. Any franchise ordinance approved does not take effect for sixty (60) days; provided, however, that if at any time before such ordinance shall finally take effect a petition shall be presented to the city council signed by not less than five hundred (500) of the bona fide qualified voters of the city, then the city council shall submit the question of the granting of said franchise to a vote of the qualified voters of the city at the next succeeding general election to be held in the city, provided that notice thereof shall be published at least twenty (20) days successively in an official newspaper of the city prior to the holding of said election. Also, the Texas Open Meetings Act requires notice of meetings of a governmental body to be posted for at least seventy-two (72) hours prior to the meeting.

## **Competitive Cable Systems**

Our community:

- was approached once in the late 1990's, but the provider chose not to enter into any formal discussions.
- has not denied any provider the opportunity to serve in our community.

- does not have mechanisms in place to offer the same or a comparable franchise to a competitor upon request because franchising is now handled by the State of Texas.

## Conclusions

The local cable franchising process functions well in the City of Killeen. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Killeen therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Killeen

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